IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1299 of 2002
with
Special Civil Application Nos. 1300 to 1310
of 2002
with
Special Civil Application No.3111 of 2002
to
3114 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgment? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

---

AHMEDABAD NEW COTTON MILLS CO LTD

Versus

I C SHAH

---

Appearance:

M/S TRIVEDI & GUPTA for the Petitioners.

MR HL RAVAL for the Respondents.

---

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 05/12/2003

ORAL JUDGEMENT

1. Since common point is involved in this group of petitions, all these petitions are disposed of by this common judgment.

2. By filing these petitions, the petitioner-Company has challenged the order passed by the Authority under the Payment of Gratuity Act, 1972, in PG Application Nos. 78, 75, 70, 60, 71, 65, 64, 72, 66, 74, 68, 59, 73, 69, 67 and 63 of 1999. The Authority under the payment of Gratuity Act allowed the individual applications filed by each of the workmen, by its orders dated 30th November, 2000. The said orders were taken further by way of appeals at the instance of the present petitioner-Management, being PG Appeal Nos. 27, 26, 21, 12, 22, 16, 15, 23, 17, 25, 29, 11, 24, 20, 18 and 14 of 2001. The Appellate Authority confirmed the aforesaid orders of the Authority under the Payment of Gratuity Act and dismissed all the appeals filed by the petitioner-Company. Against the aforesaid order of the Appellate Authority, the petitioner-Company has filed these Special Civil Applications.

3. The petitions are admitted and, during the pendency of the Special Civil Applications, a learned single Judge of this Court granted ad interim relief and during the pendency of these petitions, out of the amount which is deposited by the Company, by way of interim arrangement, the concerned employees were permitted to withdraw 40% of the amount and the rest of the amount is invested in the fixed deposit.

4. At the time of hearing of these Special Civil Applications, Mr.T.M. Barot, learned Advocate for the petitioners, very vehemently submitted that since the concerned workmen had already resigned at the relevant time, the authorities under the Act have committed grave error in granting full gratuity amount till, subsequently, they were discharged from service. He further submitted that, initially, each of the employees tendered his resignation on 31.12.1992, and, subsequently, the employees had accepted the provident fund amount also, which was given to them, on 1st January, 1993, and, in that view of the matter, according to Mr.Barot, the concerned workmen are not entitled to gratuity beyond the aforesaid date, i.e. the date on which they have tendered the resignation, i.e., on 31.12.1992. He also further submitted that, at the relevant time, the Company was a Sick Unit, which was, subsequently, handed over to one Ashima Syntex Limited,

as per a Scheme, which was sanctioned by the BIFR. Under the circumstances, it is argued by Mr.Barot that the order of the Authority under the Payment of Gratuity Act, by which it is held that the concerned workmen are entitled to get gratuity till they were, subsequently, discharged from service on 23.2.1995, is not correct and that the order of the Authority is required to be set aside. In the alternative, it is submitted by Mr.Barot that, at the most, the concerned employee is entitled to gratuity till the date of resignation, as pointed out earlier, or at least till 1st April, 1994, i.e., the date on which they have accepted the gratuity amount, for which he has relied upon one of the vouchers, which is at page 36 in the compilation of Spl.C.A. No.3111 of 2002.

5. Mr.Raval, learned Advocate, who is appearing for the concerned workmen, on the other hand, submitted that, so far as the resignation part is concerned, it is merely an eye wash and the Company continued the workmen all throughout till actually they were discharged from service on 23rd February, 1995. He submitted that at the time when the so-called resignation was given by the concerned workmen, under duress, they were not paid the gratuity amount at that very time, and he submitted that, it is, no doubt, true that they had already accepted the amount of provident fund, but, by force, the aforesaid amount was paid and they could not resist the action of the Management, by which, the said amount was given. He submitted that after the so-called resignation, which was merely a paper arrangement, all throughout, without any break, they continued and, therefore, till their services were actually put an end to, each of the workmen is entitled to gratuity as per the provisions under the Gratuity Act. He submitted that when both the authorities have found in favour of the respondent-workmen, this Court, in its extraordinary jurisdiction under Article 227 of the Constitution of India, may not interfere with the aforesaid orders. He further submitted that as per the provisions of the Bombay Industrial Relations Act and as per the Standing Orders, the employee is required to give one month's notice in case he wants to give up his employment. He submitted that the said provision is also not followed and, therefore, it cannot be said that the resignation in question is a valid resignation.

6. I have heard both the sides. I have gone through the orders passed by both the Authorities below and I have also gone through certain documents produced by the petitioner-Company.

7. It is not in dispute that after the aforesaid so-called resignation, the concerned workmen were allowed to serve with the Company, may be because the Company was in need of their services. After the aforesaid resignation, all throughout, they were allowed to serve. It is also not in dispute that at the time of the so-called resignation, the amount of gratuity was not paid to the employees. If, really, according to the Management, the concerned workman had voluntarily tendered his resignation, there is no reason why simultaneously the amount of gratuity was not paid to him at the relevant time. Simply because the concerned workman was asked to take away his provident fund amount itself cannot take away the right of the workmen to receive gratuity as per the provisions of the Gratuity Act. Even, subsequently, after considerable time, some amount was paid as per the so-called receipt produced at page 36. The concerned employee was asked to continue in employment and his services were not put to an end till 23rd February, 1995 and on that day, discharge order was given to each of the employees, with one month's notice. The said intimation was given to the workmen on the aforesaid day as per the provisions of Standing Order 23(1) applicable to the present set of employees.

Since the concerned workmen were not paid gratuity, which they were entitled as per law, the concerned workmen submitted various applications before the Authority. The Authority under the Payment of Gratuity Act, after considering the facts and circumstances of the case, allowed each of the applications, by a reasoned order. It has been found by the Authority that, after the so-called resignation dated 31.12.1992, the concerned workmen have served continuously till 23.2.1995. It has been found that the so-called resignation is merely a paper arrangement. It has been found by the authority that the provisions of the Gratuity Act override other enactments as per Section 14 of the Gratuity Act, 1972. The authority has recorded a finding of fact in paragraph 4, by holding that the concerned workmen have worked upto 23.2.1995 and that the so-called resignation dated 31.12.1992 is merely a paper arrangement and in that view of the matter, it has been held that the concerned workmen had served upto 23.2.1995. It was found that the resignation is not taken as per the provisions of the Standing Orders under the B.I.R. Act, 1946. Even before the appellate authority, no argument was advanced on behalf of the present petitioner, except stating that their submission is restricted to whatever is stated in the appeal memorandum. Reading the order of the appellate

authority, it is clear that the petitioner herein has not even argued the matter, as such, except stating that whatever stated in the appeal memo is correct. The appellate authority has also found that so far as the length of service of the concerned workmen is concerned, as well as the quantum of last pay drawn, the same is not in dispute. The appellate authority has also found that there is no restriction in proceeding with the matter, even though the Company is declared a Sick Company. Accordingly, the appellate authority has also rejected the appeals.

8. Considering the submissions of both the sides and considering the reasoning of both the authorities below, in my view, the finding of fact arrived at by both the authorities below about the total length of service of the concerned workmen, cannot be interfered with by this Court in a petition filed under Article 227 of the Constitution of India. The Authority under the Gratuity Act has given cogent reasons for coming to the conclusion that after the so-called resignation, the concerned workmen had served upto a particular date. The aforesaid order of the Controlling Authority, which is confirmed by the Appellate Authority, cannot be said to be illegal or contrary to the provisions of law, in any manner. As stated earlier, even at the time of the so-called resignation, the concerned workmen were not paid anything towards gratuity and, all throughout, without any break, they continued to serve the employer. For the first time, during the course of arguments, Mr.Barot, learned Advocate, tried to argue that after the so-called resignation, there was some break in service. It is also further argued by Mr.Barot that, at least their services after resignation cannot be treated as continuous service for getting gratuity. However, the authorities below have found that the same is merely a paper arrangement and, all throughout, the workmen had continued in service. This argument cannot be considered for denying the dues of the workmen under the Gratuity Act. Further, even this point could not be substantiated by the learned Advocate for the petitioner by pointing out any document worth the name. There is nothing to show that such resignation was accepted at the relevant time by the Management. On the contrary, there is evidence that, subsequently, they were allowed to serve continuously.

9. On the above grounds, I am of the opinion that the order of the Authority under the act as well as the order of the Appellate Authority is not required to be interfered with by this Court in its extraordinary jurisdiction under Article 227 of the Constitution of

India. It cannot be said that the Authorities below have committed any error of law or of jurisdiction in passing the impugned orders.

10. In view of what is stated above, I do not find any substance in these petitions. All these petitions are accordingly dismissed. Rule is discharged. Interim relief stands vacated.

While depositing the amont, if any excess amount is depostied by the petitioner-Company, naturally, the same is reqired to be refunded to the petitioner-Company.

5th December, 2003 ( P.B. Majmudar, J. )

***

(apj)